C.C AIYATHURAI & ANOR.

v.

THE COMMITTEE OF THE SEGAMAT COUNTRY CLUB & ORS.

HIGH COURT MALAYA, MUAR
RICHARD TALALLA J
[ORIGINATING SUMMONS NO. 24-96-1992]
14 APRIL 1992

UNINCORPORATED ASSOCIATIONS: *Annual general meeting approved a stipulated sum from the club's fund for construction of new club house and swimming pool - Actual expenditure exceeded approved sum - Next annual general meeting refused to approve the expenditure but decided the same to be tabled at an extraordinary general meeting - Members gave secretary written notice of a resolution intended to be proposed at extraordinary general meeting and requested the same to be posted on the club's notice board - Whether secretary bound to do so.*

The members of the Segamat Country Club during its annual general meeting (AGM) 1988/1989, had approved a sum of RM250,000 of the club's fund for the construction of a new club house and a swimming pool at the recommendation by the general committee. The general committee had the duty by virtue of r. 32 of the club's constitution to manage the club and by the r. 41 to control the finance of the club.

At the next AGM 1989/1990, a financial report and statement of account showing the expenditure for the said construction of RM780,000 was tabled for approval of the members. The members declined to approve the expenditure and instead decided the same to be tabled at an extraordinary general meeting (EGM) to be held at a subsequent time.

On 15 March 1992, the secretary gave notice of an EGM to be held on 18 April 1992. On 30 March 1992 the plaintiffs gave the secretary written notice of a resolution which they intended to propose at that EGM and requested the secretary to post the same on the club's notice board in compliance with r. 49 of the club's constitution.

The secretary failed to do so. The plaintiffs therefore brought this action claiming a declaration that the secretary was bound to do so.

It was argued that the secretary was entitled to refuse the plaintiffs' request as the plaintiffs had not complied with r. 70 which provided that one calendar month's notice shall be given to the secretary of the intention of any member to propose any new rule or alteration. It was further argued that the plaintiffs should have had recourse to r. 48 which provided that the general committee may call on EGM when any question of urgent importance shall arise and shall be bound to do so on receiving a requisition signed by 20 members who shall state thereon the purpose for which they desired the meeting to be called.

It was claimed on behalf of the secretary that the plaintiffs should have gathered 20 members and requisitioned on EGM under r. 48.

Held:

[1] There was no question of the plaintiffs ever proposing any new rule or alteration and therefore r. 70 does not apply.

[2] The proposed resolution in the circumstances that have befallen the club was thoroughly reasonable one, *bona fide*, having one aim only and that was the safeguarding of the club's money.

[3] As the proposal was ancillary to the main issue before the impending EGM the secretary should have acceded to the plaintiffs' request and complied with r. 49.

[4] It was not every single item of business to be transacted at a general meeting which is subjected to notice under r. 49. The object of r. 49 was to give members of the club fair notice of what is to be discussed and resolved at a particular general meeting. As the proposed resolution was ancillary to the main discussion, it did not call for notice at all and accordingly r. 49 did not apply.

[By consent no order and no order as to costs.]

JUDGMENT

Richard Talalla J:

The agreed facts are that the Segamat Country Club has been in existence for approximately 25 years and currently has a membership of some 1,400 persons. Its affairs have been conducted efficiently and generally uneventfully until some 2 years ago when there arose a question of the construction of a new club house and a swimming pool. At its annual general meeting (AGM) 1988/1989 the members approved a sum of RM250,000 of the club's funds for the said construction, that sum having been recommended to the said members by the general committee who by virtue of r. 32 of the club's constitutions have the duty of managing the club and by r. 41 the control of the finance of the club. At the next AGM of the club, that is to say the 1989/1990 meeting, a financial report and statement of accounts was tabled for the approval of the members at their meeting. These documents evidenced an expenditure of approximately RM780,000 for the said construction. The members at the meeting declined to approve the expenditure and instead decided that the same be tabled at an extraordinary general meeting (EGM) to be held at a subsequent time. On 15 March 1992, the secretary gave notice of an EGM to be held on 18 April 1992.

On 30 March 1992, the plaintiff gave the secretary written notice of a resolution which they intended to propose at that EGM and requested the secretary to post the same on the club's notice board in compliance with r. 49 of the club's constitution. The secretary failed to do so. The plaintiffs therefore brought this action claiming a declaration that the secretary was bound to do so.

Before me it was argued that if the resolution amounted to an alteration of the rules, then r. 70 of the club's constitution had to be complied with and in as much as the plaintiffs had not complied with r. 70, the secretary was entitled to refuse the plaintiffs' request. Rule 70 reads as follows:

> One calendar month's notice by an Ordinary, Life or Outstation Member of the intention to propose any new Rule or Alteration shall be given to the Secretary who shall cause the same to be posted on the Club's Notice Boards and shall send notice of the same to Every Ordinary, life or Outstation Member at his address in the club Register at least fourteen (14) days before the general meeting.

As I see it, there is no question of the plaintiffs ever proposing any new Rule or Alteration and therefore r. 70 does not apply.

Then it was argued that the plaintiffs should have had recourse to r. 48 of the club's constitution, which reads as follows:

The Committee may call an extraordinary general meeting when any question of urgent importance shall arise and shall be bound to do so on receiving a requisition signed by 20 members who are Ordinary, Life or Outstation members of the club who shall state thereon the purpose for which they desire the meeting to be called.

It is claimed on behalf of the secretary that the plaintiffs should have gathered 20 members and requisitioned an EGM under r. 48. I do not think so. As I see it each and every member of the general committee in carrying out that member's duty to manage the club is bound at all times to act honestly and reasonably, within the framework of the law, and in the overall interest of the members of the club and in the control of the finance of the club they are trustees in every sense of that word.

Hence, the general committee is faced with a very serious situation indeed, where *prima facie* more than half a million ringgit of the club's money has been expended without the authority of its members and in apparent contravention of the members approval of expenditure limited to RM250,000. It is an extraordinary situation in which the members thought fit to take extraordinary measures and so directed that an extraordinary general meeting be called to consider the matter.

The resolution the plaintiffs are proposing reads as follows:

1. The club shall not spend, allocate or expend monies or assets of the club in any form whatsoever in the development and/or expansion of the club except on land of which the club has registered lease of not less than fifteen (15) years.

2A Any renovation and/or repairs to the club premises costing more than RM15,000 shall:

(i) Before any tender is accepted by the club display on the club Notice Board for fourteen (14) days:

(a) the plans and specifications of the proposed renovation and/ or repairs or any specific part of the work.

(b) the persons or parties who have tendered to do renovation and/or repairs or any specific part of the work.

AND

(ii) After the tender or tenders are accepted display on the club Notice Board;

(a) the name or names and addresses of the tenders.

(b) he work undertaken and the cost of such work.

2B Any tender exercise within a space of six (6) months from any previous tender exercises shall be deemed to be the same tender exercise and taken collectively and every such tender exercise shall be subject to the above mentioned provision save in respect of displaying the details as required above on the club Notice Board for 14 days before the tender is accepted except in respect of the last tender exercise within that 6 month period.

As I see it, the proposed resolution in the circumstances that have befallen the club is a thoroughly reasonable one, *bona fide*, having one aim only and that is the safeguarding of the club's money to the end that a fiasco such as has occurred will not happen again - at least in such enormity. The proposal, in my view, is ancillary to the main issue before the impending EGM. The secretary should have acceded to the plaintiffs' request and complied with r. 49. Now the time frame provided for in r. 49 has largely lapsed. Notwithstanding the same, the secretary should forthwith, today, post the plaintiffs' letter of 30 March 1992 and the proposed resolution on the club's notice board and his Counsel now assures me that he will do so.

I will go further. Is it not every single item of business to be transacted at a general meeting which is subjected to notice under r. 49. Rule 49 must be construed reasonably. Its object is to give members of the club fair notice of what is to be discussed and resolved at a particular general meeting. That which is to be discussed at the EGM on the 18 April 1992 is the financial report and statement of accounts with particular emphasis on the over expenditure of more than half a million ringgit. As I already stated the proposed resolution is ancillary to the main discussion. I find that it does not call for notice at all and accordingly r. 49 does not apply (the direction for posting under r. 49 is *ex abundanti cautela* and if there is a contradiction in terms or thought, it will simply have to be forgiven).

Finally I find and hold that a common sense attitude should have been and be adopted in regard of the whole affair from beginning to end and upon that premise I hold that the plaintiff, Mr. C.C. Aiyathurai, could just as well stand up at the EGM on 18 April 1992, without notice, and in perfectly good order verbally move his proposal and the second plaintiff Mr. Lai Kim Tiam second the same whereupon the chairman of the meeting will be duty bound to put the motion to the members in meeting.

In the end I think this is a storm in a tea-cup.

By consent no order and no order as to costs.

Also found at [1992] 4 CLJ 1974